

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>1626 WAZEE INVESTMENTS, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Steven E. Weil Rockmount Ranch Wear Mfg. Co.</p> <p>Address: 1626 Wazee Street Denver, Colorado 80202</p> <p>Phone Number: (303) 629-7777</p>	<p>Docket Number: 43349</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 1, 2004, Diane M. DeVries and Debra A. Baumbach presiding. Petitioner appeared pro se. Respondent was represented by Maria Kayser, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1626 Wazee Street, Denver, Colorado
(Denver County Schedule No. 02331-11-005-000)**

Petitioner is protesting the 2003 actual value of the subject property, a five-story brick warehouse built in 1901.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been overvalued. The Respondent utilized comparable sales that were purchased for loft conversion purposes. All of the sales used were over-inflated.

Respondent:

Respondent contends that the subject has been correctly valued considering all three approaches to value. The overall value was correlated to the market comparison approach.

FINDINGS OF FACT:

1. Petitioner's witness, Steve Weil, principal of 1626 Wazee Investments, presented the following indicators of value:

Market:	\$1,100,000.00
Income:	\$ 514,000.00

2. Based on the market approach, Mr. Weil presented a value of \$1,100,000.00 for the subject property.

3. Petitioner's witness presented eight comparable sales ranging in sales price from \$380,700.00 to \$2,500,000.00 and in size from 16,731 to 92,515 square feet. No adjustments were made to any of the sales.

4. Mr. Weil testified that Petitioner's comparable sales have an average sales price per square foot of \$24.87. If the market comparison approach were utilized in the valuation process, then the \$24.87 per square foot indicated value would result in a value for the subject property of \$746,063.00.

5. Mr. Weil testified that the subject property is one of three remaining warehouses in the Lower Downtown (LoDo) historical area. The subject was built in 1901 and Rockmount Ranch Wear has been an occupant since 1946. Rockmount negotiated a long-term triple net lease and pays all expenses including property taxes. Warehouse ownership has changed hands within the family over the years.

6. Mr. Weil testified that in 1996 they began negotiating with the building owners to purchase the warehouse. They reached agreement on the purchase price in the summer of 2002 and closed the sale in March 2003. The purchase price was based on the sale of the Karman buildings located on the corner of Wazee and 15th Street. These properties were purchased as a warehouse, loft

and office conversion and sold for approximately \$48.00 per square foot. As the Karman buildings are located on a corner, they were considered more desirable and suitable for conversion.

7. Mr. Weil testified that the subject was purchased for a market price of \$40.00 per square foot and reflected a discount based upon market conditions, no real estate commission, higher vacancy rates and overall condition and utility of the building.

8. Mr. Weil testified that the subject property has numerous deficiencies including limited access, limited parking and limited interior utility due to wall thickness. One entire floor has been listed for rent since 2000, but there has been no interest. Additionally, the Respondent has not correctly calculated the square footage of the building. The Respondent calculated the square footage of the exterior without considering the limited use of the interior. The basement is not considered to be usable warehouse space and has not been rented for 60 years. There is approximately 4,250 square feet of unusable space not including the basement.

9. Mr. Weil testified that the Respondent considered all three approaches to value, but placed most weight on the market comparison approach. All of Respondent's comparable sales are superior in location and condition, and sold at a premium. All of the sales were sold for redevelopment into loft and condominium conversions. Many of the comparable sales have the capacity to construct parking garages. There have never been any plans to redevelop the subject property. The subject has always been used as a warehouse and the income approach should be appropriately considered in the valuation.

10. Mr. Weil testified that the Petitioner's income approach was based upon the actual rent from the subject property, as well as rental rates from other warehouse properties in the area. The adjusted market rent was calculated at \$2.57 per square foot with a capitalization rate of 10.8%. He applied a 20% adjustment for the subject's deficiencies. The vacancy rate was estimated between 15 to 20%.

11. Under cross-examination, Mr. Weil testified that the subject property was not listed for sale on the open market. However, the sale of the subject was an arms-length transaction and the sales price was based upon similar properties. A long-term market lease was in place. For the last three years, they have advertised the second floor for lease for office and storage space with rental rates starting at \$8.00 per square foot, which is less than the going rental rate for storage space in the area. They have not been successful in finding any tenants.

12. Under further cross-examination, Mr. Weil testified that a 10% discount adjustment was made to all the comparable rents for each year of vacancy. No adjustments were made for parking or other amenities. Most of the comparables are contiguous and superior properties.

13. Petitioner is requesting a 2003 actual value of \$1,100,000.00 for the subject property.

14. Respondent's witness, Rick Rutt, a Certified General Appraiser with the Denver County Assessor's Office, presented the following indicators of value:

Market:	\$2,086,500.00
Cost:	\$ 978,300.00
Income:	\$1,223,100.00

15. Based on the market approach, Respondent's witness presented an indicated value of \$2,086,500.00 for the subject property.

16. Respondent's witness presented five comparable sales ranging in sales price from \$1,100,000.00 to \$5,540,000.00 and in size from 15,000 to 92,094 square feet. After adjustments were made, the sales ranged from \$1,834,880.00 to \$2,541,565.00.

17. Mr. Rutt testified that all three approaches to value were considered. However, most weight was placed on the market comparison approach because the area is in high demand. Since the early 1990's, the subject area has experienced a revitalization cycle. Warehouse and other properties in the area have been converted into residential lofts, condominiums, office space, shopping and restaurants. In 2003, there were only three warehouses left from the previous 15 to 20 in past years. This has resulted in property values increasing upward by 12% per year.

18. Mr. Rutt testified that he tried to locate sales within the direct market area. As there were not enough valid sales that occurred within the January 1, 2001 through June 30, 2002 base period, he expanded the data collection period in six-month increments to July 1999. He made adjustments for all of the differences in physical characteristics. The sale of the subject was not considered to be a suitable sale for comparison, as the subject property was not offered for sale on the open market and the sale was between family members.

19. Mr. Rutt testified that his square footage is based upon the building's exterior measurements rather than the interior measurements. Exterior measurements are commonly used in the market comparison approach. The income approach was not considered to be the most suitable method for valuation. No market leases or income streams were available in the LoDo area. The cost approach was also not considered to be the most reliable method for valuation.

20. Mr. Rutt testified that he did not consider the comparable sales presented by the Petitioner. All but a few were located outside the market area, and the sale of the property located on Arapahoe Street did not appear to be an arms-length transaction.

21. Under cross-examination, Mr. Rutt testified that consideration was given for all of the factors affecting the valuation of the subject property.

22. Respondent assigned an actual value of \$1,670,300.00 to the subject property for tax year 2003.

CONCLUSIONS:

1. The Board placed little weight on the income approaches to value presented by Petitioner and Respondent. Many of Petitioner's rent comparables are located outside the subject's market area and the only adjustment made was for the length of the time on the market. Petitioner did not provide adequate information on income streams, expenses or other factors to derive a supportable income approach. Respondent's income approach also reflected rent comparables that are located outside of the subject area.

2. The Board could give little weight to Petitioner's market approach as the comparable sales were not adjusted to reflect any physical differences, and the majority of the sales were located outside the direct market area. Although Petitioner argued that the subject sale was an arms-length transaction, the Board was not convinced that the subject sale was a good indicator of value, as the property was not exposed to the open market and was between related parties.

3. Petitioner contended that all of Respondent's comparable sales were purchased for redevelopment purposes, are superior to the subject, and are inappropriate to use to value the subject as the subject property's actual use is as a warehouse property and the owners have no intention of changing its use in the future.

4. During the statutory time frame ending June 30, 2002, there was a lack of warehouse properties and a lack of warehouse market sales located in the subject's neighborhood (LoDo). The number of warehouses in LoDo has dwindled from 15-20 in recent years to only three as of the assessment date. This rapid decrease in warehouse use in the area clearly shows that neighborhood uses have changed. Additionally, Petitioner has been attempting to rent a portion of the property since 2000 and has had no takers. Both of these factors, no demand for rent of the subject and the rapid diminishing of warehouse properties in the neighborhood, would indicate that the most likely potential purchaser of the subject property would be an investor looking to rejuvenate the property to some alternate use, as has already occurred to the majority of other warehouse properties in the area.

5. In *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P2d 146, 151 (Colo. 1988), the Colorado Supreme Court held that ". . . reasonable future use is relevant to a property's current market value for tax assessment purposes." The court explained that Colorado's tax statute "does not preclude consideration of future uses." The court contrasted "reasonable future use" with "speculative future uses," which the court said could not be considered in determining market value for property tax purposes.

6. The Board has determined that the redevelopment of the subject property is a "reasonable future use" and is not a "speculative future use." The Board placed most weight on Respondent's market approach as the sales are located within the same market area as the subject, share the same economic influences, and were appropriately adjusted for differences in physical characteristics. The Board also notes that the assigned value of the subject property is less than the lowest indicated value via Respondent's comparison sales approach.

7. With respect to Petitioner's concern regarding the use of interior versus exterior building measurements, the Board agrees with Respondent that exterior measurements are acceptable appraisal practice. All of Respondent's comparable sales reflect exterior measurements.

8. Respondent presented a well-supported and documented appraisal report, considered all three approaches to value, and made appropriate adjustments to all of the sales.

9. Based on all of the evidence and testimony presented, the Board affirms Respondent's assigned value of \$1,670,300.00 for tax year 2003.

ORDER:

The Petition is denied.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 26th day of August 2004.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries
Diane M. DeVries

Debra A. Baumbach
Debra A. Baumbach

This decision was put on the record

AUG 26 2004

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.

Penny S. Lowenthal
Penny S. Lowenthal

